IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1072 OF 1989

The State of Maharashtra ...Appellant
Vs.
Hari Dattu Patil ...Respondent

Shri K.K. Tated, A.G.P. for the Appellant.
Mr Rajiv Patil for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE ON WHICH JUDGMENT IS RESERVED : MAY 02, 2006.

DATE ON WHICH JUDGMENT IS PRONOUNCED : JULY 14, 2006.

JUDGMENT:

1. The Respondent is the original claimant in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The acquisition relates to lands situated at village Panvel, Taluka Panvel, District Raigad. The lands subject matter of the Appeal were notified for acquisition by a notification dated 03rd February, 1970 issued under section 4 of the said Act. The award under section 11 of the said Act was made on 13th February, 1986 by which market value at the rate of Rs.2.70/- per sq. meter was offered to the Respondent. According to the case of the Respondent-Claimant, in response to the notice under section 9(3)(4) of the said Act, the Respondent claimed compensation at the rate of Rs.20/- per sq.

yard. By the impugned judgment and award dated 29th February, 1988, Reference Court fixed the market value at the rate of 15/- per sq. meter and granted statutory benefits to the Respondent.

2. Present Appeal is preferred by the Appellant-State of Maharashtra for challenging the impugned judgment and award on the ground that the market value awarded is excessive. The Respondent-Claimant has filed a cross-objection in which market value is claimed at the rate of 25/- per sq. meter.

3. Shri Tated, the learned A.G.P. appearing for the State submitted that the compensation awarded by the Reference Court is extremely on the higher side. He submitted that considering the evidence on record market value could not have been fixed at the rate of Rs. 15/- per sq. meter. Shri Rajiv Patil appearing for the Respondent-Claimant placed reliance on decision of the **Division Bench of this Court in the case of Nama Padu Hudar & Ors. Vs. State of Maharashtra (First Appeal No.754 of 1986 & other connected Appeals)** delivered by a Division Bench of this Court on 25th and 26th February, 1992. He submitted that the said decision has attained

finality. He submitted that as the said decision relates to acquisition of the land at village Panvel which is covered by notification of the same date, the present Appeal will be governed by the said decision of this Court. He invited my attention to the evidence on record. He pointed out that the evidence shows that acquired land is situated at distance of 480 meters away from Bombay-Pune National Highway and therefore, in view of the decision of the Division Bench, the Respondent will be entitled to market value at the rate of Rs.25/- per sq. meter. He submitted that as award under section 11 of the said Act was made after 24th September, 1984, the Respondent will be entitled to claim compensation at a rate more than Rs.20/- per sq. yard (i.e. about Rs.23/- per sq. meter) which was claimed in response to notice under section 9(3)(4) of the said Act as section 25 of the said Act as amended by the Amendment Act No.68 of 1984 will apply to the present case. He placed reliance on decision of the **Apex Court dated 06th March, 2006 in Civil Appeal No.1557 of 2006 (Shantadevi Hariram Ruparel Vs. Special Land Acquisition Officer & Anr.).** He also placed reliance on unreported decision of the **learned Single Judge of this Court dated 29th March, 2006 in First Appeal No.111 of 1992 (Hanif Ibrahim Navedkar Vs. State of Maharashtra).**

4. Shri Tated, learned A.G.P. has generally replied to the submissions made by Shri Rajiv Patil on cross-objection and in particular to the submissions regarding applicability of amended section 25 of the said Act. Shri Tated placed reliance on judgment and order dated 25th August, 2005 delivered by a Division Bench of this Court in **First Appeal No.430 of 1993 (State of Maharashtra Vs. Dhanaji Kamalu Joshi).** He also placed reliance on two more decisions of the same **Division Bench in case of Cosmopolitan Co-operative Housing Society Vs. Special Land Acquisition Officer (First Appeal No.575 of 1995) decided on 23rd September, 2005 and in the case of State of Maharashtra Vs. Govind Goma Gowari & Ors. (First Appeal No.710 of 1989).** He invited my attention to the decision of the **Apex Court in the case of Land Acquisition Officer Vs. B.V. Reddy and Sons (2002 (3) Supreme Court Cases Page 463).** He pressed into service decision of the **Supreme Court in the case of Dadu Yogendrenath Singh Vs. The Collector (A.I.R. 1977 Supreme Court Page 1128).** He pointed out that the Apex Court has not granted any stay to the operation and execution of the decision of Division Bench of this Court in the case of Cosmopolitan Co-operative Housing Society (supra). He submitted

that the decision of the Apex Court in the case of Shantadevi Ruparel (supra) does not lay down any ratio. He submitted that in any case the decision of the Apex Court in the case of Land Acquisition Officer Vs. B.V. Reddy & Sons (supra) holds the field as it is delivered by a bench consisting of three Hon'ble Judges of the Supreme Court whereas, the decision of Shantadevi Ruparel (supra) is by a bench consisting of two Hon'ble Judges. On merits he submitted that the case of the Respondent will fall in category IVA fixed by the case of Nama Padu Hudar (supra). He, therefore, submitted that in any event the Respondent is entitled to market value at rate of more than Rs.20/- per sq. meter.

5. I have considered the submissions. In the award under section 11 of the said Act which is forwarded alongwith the reference under section 18 of the said Act it is stated that notice under section 9 of the said Act was served to the Respondent-Claimant and the Respondent-Claimant has submitted a claim of Rs.20/- per sq. yard in response to the said notice. The date of the award under section 11 is 13th April, 1986. The submission regarding applicability of the amended section 25 of the said Act will have to be

considered first. The Land Acquisition (Amendment) Act, 1984 (Act No.68 of 1984) was brought into force on 24th September, 1984. Prior to the amendment carried out by the said Act, section 25 of the said Act read as under:

> "25. Rules as to amount of compensation.- (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or to be less than the amount awarded by the Collector under Section 11.
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> (2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.
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> (3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount

awarded by the Collector."

The Amendment to section 25 was made by Act No.68 of 1984 which was brought into force on 24th September, 1984. After amendment, section 25 of the said Act reads thus:

> "25. Amount of compensation by court not be lower than the amount awarded by the Collector.- The amount of compensation awarded by the court shall not be less than the amount awarded by the Collector under Section 11."

6. Thus, before the amendment, it was not open for the claimant to claim an amount in a reference under section 18 of the said Act which is higher than amount claimed by him in response to notice under section 9 of the said Act. The embargo against claiming an amount higher than what was claimed in response to notice under section 9 was removed by the amendment to section 25 effected by the Act No.68 of 1984.

7. A reference will have to be made to the decision of the Apex Court in the case of Land

Acquisition Officer Vs. B.V. Reddy and Sons (Supra). The Apex Court formulated five questions for consideration which read thus:

"(1) Can the provision of Section 25 of the Land Acquisition Act be construed to be procedural in nature or substantive?

(2) If it is held to be substantive in nature, then **can the amended provisions of Section 25 of the Act apply to a case where the award of the Land Acquisition Collector had been made much prior to the amendment in question?**

(3) Whether the judgment of this Court in Krishi Utpadan Mandi Samiti Case can be held to be correctly decided?

(4) Whether at all it would be appropriate for this Court to lay down the law and yet not interfere with the judgment of the Division Bench of the Andhra Pradesh High Court with regard to the quantum of compensation awarded?

(5) Whether the petition under Article 32 can be entertained for deciding the validity of the unamended provisions of Section 25?" (Emphasis supplied)

8. The Apex Court while answering the first question held that provision of section 25 of the said Act is not a procedural provision but it is a substantive provision. In paragraph No.5 of the decision, the Apex Court has observed that in the case before it the award under section 11 of the said Act was made between 30th September, 1982 to 24th September, 1984. The second question formulated by the Apex Court is decided in paragraph No.6. The relevant portion of paragraph No.6 reads thus:

> "**In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the**

Act."(Emphasis supplied)

In paragraph No.8 of the decision, the Apex Court held as under:

> "To the case in hand, it is difficult for us to apply the aforesaid principle. On the date the land was notified for acquisition under Section 4(1) of the Act, the unamended provision of Section 25 was in force and it was made known to all concerned that the Reference Court will have no power to award the amount in excess of the amount claimed by the claimants. Not only the language of the statute was clear and unambiguous, but also the question was not res integra, in view of the decision of this Court in Dadu Yogendre Nath Singh V. Collector, Seoni. Until the statutory rigour contained in sub-section (1) of Section 25 stood obliterated by the amended provisions of section 25 and until all restraints and embargoes placed for the court stood totally liberated, the Reference Court had no jurisdiction to award the amount in excess of the amount

claimed by the claimant."

9. It must be noted here that while formulating the questions, the Apex Court has formulated the second question which will apply to a case where award of Land Acquisition Officer has been made prior to 24th September, 1984. There is no specific question framed on applicability of amended section 25 to a case where the award under section 11 is made on or after 24th September, 1984 i.e. after coming into force of the Act No.68 of 1984. In paragraph No.6 of the decision, the second question is answered by clearly observing that question of applicability of the amended provisions of section 25 of the said Act to an award of the Collector made earlier to the amendment.

10. In the case of Dhanaji Kamlu Joshi (supra) the award was made under section 11 on 03rd September, 1986. The second point for consideration framed reads thus:

"2. Whether the claimant is entitled to claim enhancement of compensation over and above the amount claimed by him in answer to the notice under

> Section 9 of the said Act in relation to the land acquisition proceedings initiated prior to 24-9-1984 in view of the unamended Section 25 of the said Act?"

The Division Bench has answered the second question in the negative. In paragraph No.28 of the decision, the Division Bench has observed thus:

> "28. It was sought to be argued that in the case in hand the award was admittedly passed after 24-9-1984 and therefore the question of applicability of the unamended Section 25 to the proceedings does not arise. It is to be noted that right to quantify the compensation is assured to the claimant under Section 9 of the said Act. Though a declaration under Section 6 of the said Act amounts to conclusive evidence that the land is needed for public purpose in terms of sub-section (3) to (6) thereof, however, the claimant is entitled to quantify the compensation in answer to the notice under Section 9. **Once such a right had been matured in**

favour of the claimant and such right was exercised by the claimant and the same was done prior to 24-9-1984, the provisions of the unamended Section 25 would be attracted in relation to such proceedings. In fact, the unamended Section 25 would invariably apply to all the acquisition proceedings wherein the Section 4 Notification had been issued prior to the said date. As already observed above, the declaration under Section 6 is the conclusive evidence about the land being required for public purpose. But, the compensation for land acquired is to be assessed on the basis of the market value of the land on the day of publication of the Notification under Section 4 of the said Act. In other words, the right to compensation would be in terms of the market value of the land acquired as on the day of publication of Notice under Section 4 of the said Act. **Being so, merely because the award therein is passed after amendment to Section 25 i.e. after 24-9-1984, that will not enure to the benefit of the claimant to contend that**

the amended provision of Section 25 would apply to his case. As regards the quantification of the compensation pursuant to the exercise of his right under Section 9 read with section 25(1), as was in force at the relevant time, the provisions of the unamended Section 25 would get attracted."

11. It is apparent that observation of the Division Bench in paragraph No.28 of the judgment will have direct bearing on the question which is required to be decided in this Appeal. In the case of State of Maharashtra Vs. Govind Goma Gowari the same Division Bench has taken a similar view. My attention is also invited to a decision of another Division Bench of this Court dated 31st March, 2004 in First Appeal No.757 of 2003 (State of Maharashtra Vs. Kamali Keshav Mhatre & Ors.). The said Division Bench has also considered the provisions of amended section 25 in the light of the decision of the Apex Court in the case of Land Acquisition Officer Vs. B.V. Reddy & Sons (supra). Paragraph 5 of the said decision of the Division Bench reads thus:

"5. We then come to the next contention

advanced on behalf of the State that considering section 25 as it stood prior to its amendment, the claimants who had not replied pursuant to notice under section 9, claiming market value for the acquired land which they were entitled to or had claimed at market value at a particular rate, would not be entitled to claim market value of the acquired land at a higher rate than that awarded by the SLAO or more than what they themselves had claimed in the reply to the notice under section 9.

. On behalf of the claimants their learned counsel contends that what is to be considered in section 25 as it now stands and once that be the case and considering the language of section 28(A), the Court before whom the application under section 28(A-3) is pending would not be bound by the unammended provision of section 25 and the Court would be entitled to fix market value at a higher rate considering the overall provisions.

. The provisions of unamended section

25 have been reproduced by the Apex Court in the case of Land Acquisition Officer-cum-DSWO, A.P. Vs. M/s. B.V. Reddy & Sons AIR 2002 Supreme Court 1045. Before the Apex Court also the very issue which was under consideration before us was also in issue. Answering the question whether the amended provisions of section 25 would be retrospective, the Apex Court has observed as under:

> "The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24.9.1984, the date on which Act 68 of 1984 came into force."

. Therefore, the provisions of Section 25 as amended would apply to those acquisitions which were made subsequent to 24.9.1984. On behalf of the State, our attention was also invited to the Judgment of the Apex Court in the case of Ujjain

Vikas Pradhikaran (Ujjain Development Authority) Vs. Tarachand and Another (1996) 5 Supreme Court Cases 574. The Apex Court therein noted that under Section 25(2) of the Act prior to the Amendment, the Court was prohibited to enhance the compensation in excess of the amount claimed pursuant to the notices issued under section 9 and 10 of the Act. Since sub-section (2) of section 25 was deleted by Amendment Act 68 of 1984, the limitation on the exercise of the power of the court was taken away. Nonetheless, it would always be open to a party to claim a particular amount and having claimed at the rate, the question arises whether the court could grant compensation higher than that claimed by the party? Answering the issue the court observed that it would be obvious that when a party claims compensation at a particular rate, he assesses the market value of the land at that particular rate and seeks compensation on that basis. Having assessed the compensation at that particular rate, the question emerges whether the court could grant higher

> compensation than was assessed by the party. The court held that in such situation the court could not grant compensation then what was sought for by the party.
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> . **It is therefore clear that it will not be open to the court to consider the provisions of section 25 as amended in those appeals where the awards were made before the amendment.** The question then would be whether on this court the State's appeal will have to be allowed and the market value as granted will have to be set aside."

The view taken by the said Division Bench appears to be that amended section 25 will not apply where the awards under section 11 were made before 24th September, 1984. The Division Bench has in terms held that the provisions of section 25 as amended would apply to those acquisitions which were made subsequent to 24th September, 1984.

12. There is a very recent decision of the Apex Court which deals with the same question. The

decision of the Apex Court is in the case of Shantadevi Ruparel(supra). The said case was decided very recently on 06th March, 2006 i.e. after the decisions of the Division Bench of this Court which were referred to above. In the decision of the Apex Court it is observed as under:

> " Learned counsel appearing on behalf of the respondent- Authority has, however, relied upon a decision of this Court in Union of India vs. Pramod Gupta by Lrs. & Ors. reported in 2005(12) SCC 1, and in particular paragraph 1,3 and 4 thereof. In that decision, the Court held that the claimants were bound by their own pleadings and **that they could not be granted more than what they have asked for in their claim to the Land Acquisition Officer under Sec. 25 of the Land Acquisition Act as it stood prior to its amendment.**
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> **. As has been rightly contended by the learned Counsel appearing on behalf of the appellant in that case the acquisition proceedings had taken place much prior to the amendment of Sec.25 and 28-A of the**

Act. It was pointed out that in this particular case although the Notification was prior to the date of the amendment, both the Award as well as the Reference Court decision were much subsequent thereto.

. Under Section 25 as amended in 1984 there is no maximum amount which is awardable by way of compensation by the Court. The previous embargo of the Court not of over-step the limit of the claimants claim has been removed by the amendment. Additionally, under section 28-A it is possible for even the Collector to redetermine the compensation payable on the basis of the Award of the Court.

. Having regard to the wording of Secs.25 and 28-A after the 1984 Amendment we are of the view that the appellant is entitled for the same rate as has been granted by the same High Court in a decision of a coordinated bench in the case of Nama Padu Hudar v/s. State of Maharashtra through the Special Land

> Acquisition Officer in First appeal No.754/86 judgment dated 25 & 26 February, 1993. It is not in dispute that the said decision was challenged by the respondent-Authority but the special leave petition was dismissed by this Court. The appeals are disposed of by directing the respondent-Authority to grant the appropriate compensation on the basis of the decision of the High Court in Huda's case to the appellant." (Emphasis supplied)

13. The Apex Court did not accept the argument based on bar created by section 25 (unamended) and proceeded to direct that the claimant will be entitled to enhanced compensation in accordance with the decision of the Division Bench of this court in the case of Nama Padu Hudar. The Apex Court rejected the argument of the Respondent based on unamended section 25 though notification under section 4 was prior to the amendment.

14. What has been held by the Apex Court in the case of Shantadevi Ruparel is that section 25 as it stood prior to the amendment will not apply in a case where the award of Land Acquisition Officer is

subsequent to the amendment. The Apex Court has in terms held that previous embargo on court of not over stepping the limit of claimant's claim has been removed by the amendment. The Apex Court in the case of Shantadevi Ruparel (supra) has referred to the decision in case of Union of India Vs. Pramod Gupta reported in 2005(12) Supreme Court Cases Page 14. In the decision of the Apex Court in the case of Union of India v/s. Pramod Gupta, a reference has been made to its earlier decision in case of Land Acquisition Officer Vs. B.V. Reddy(supra). In the case of Union of India Vs. Pramodkumar, the Award under Section 11 of the said Act was made in the year 1967. Therefore, it was held that unamended Section 25 will apply. However, in the present case the question of applicability of the Shantadevi Ruparel's case will not arise in view of what has been held by me in later part of the judgment.

15. Turning back to the facts of the case, in the present Appeal the award under section 11 itself notes that claim at the rate of Rs.20 per sq. yards (about Rs.23/- per sq. meter) was made by the Appellant in response to the notice under section 9 of the said Act. The decision in the case of Nama Padu Hudar(supra) has been approved by the Apex Court in

the case of Shantadevi Ruparel(supra). The Division Bench in the case of Nama Padu Hudar (supra) was in respect of the lands situated at village Panvel and Kamothe which were notified for acquisition on 03rd February, 1970 for the same public purpose of development of city of Navi Mumbai. There is no reason why the said decision should not be followed in this case. Therefore, it will have to be ascertained as to in which of the five categories in the case of Nama Padu Hudar (supra), the present case will fall. The Respondent-claimant examined one Jeevan Narayan Kulkarni as expert valuer. His report has been exhibited as Exhibit 32. In paragraph No.1 of the report he has stated that the Bombay-Pune highway is at a distance of 880 meters from the acquired lands. It is thus obvious that the present case will fall in category IV-A which covers cases of lands which are situated at a distance of 800 meters to 2000 meters from Bombay-Pune National Highway. The market value awarded to such cases is Rs.20/- per sq. meter. In the present case the same market value will have to be awarded. It must be noted here that the claim made by the Respondent in response to the notice under section 9 is Rs.20/- per sq. yards which is equivalent to Rs.23/- per sq. meter. Therefore, even if unamended section 25 of the said Act is to apply, the

cross-objection of the Respondent will have to be allowed by awarding market value at the rate of Rs.20/- per sq. meter.

16. Hence, I pass the following order:

(i) First Appeal No.1072 of 1989 is dismissed. The Appellant will pay costs of the Appeal to the Respondent.

(ii) Cross-objection filed by the Respondent is allowed. The impugned judgment and award is modified. The Respondent is entitled to market value at the rate of Rs.20/- per sq. meter together with statutory benefits under section 23(1A), section 23(2) and section 28 of the Land Acquisition Act, 1894. The Respondent-claimant will be also entitled to proportionate costs of the reference proceedings from the State Government.

(iii) The Appellant will pay proportionate costs of the cross-objection to the Respondent.

(iv) Reference court will calculate the amount of compensation payable to the Respondent within period of four months from the date on which

writit of this order is received by it.

JUDGE